

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**KIMBER L GIBBS**  
Claimant

**APPEAL NO. 15A-UI-09471-TN**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS INC**  
Employer

**OC: 12/21/14**  
**Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Kimber L. Gibbs, the claimant, filed a timely appeal from a representative's decision dated August 11, 2015, reference 01, which denied unemployment insurance benefits finding the claimant voluntarily quit work on January 16, 2015, for personal reasons. After due notice was provided, a hearing was held in Burlington, Iowa on November 16, 2015. Claimant participated. Participating as a representative and a witness was Mr. Michael Mitchell. Also participating as a witness was Joyce Gibbs, claimant's mother. The employer participated by Ms. Sarah Fiedler, Human Resource Representative. Claimant's Exhibits One and Two and Employer's Exhibit A were admitted into the hearing record.

**ISSUE:**

The issue is whether the claimant voluntarily quit employment with good cause attributable to the employer or was discharged for misconduct in connection with her work.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Kimber Gibbs began employment with Team Staffing Solutions, Inc. on September 4, 2012. Ms. Gibbs was assigned to work at the Wingart Company as a production laborer and was paid by the hour. The claimant reported to Mr. Michael McCullough, an on-site representative of Team Staffing Solutions.

Kimber Gibbs was separated by Team Staffing Solutions, Inc. on January 16, 2015, when Ms. Gibbs telephoned the temporary employment service to inform the company that she had a doctor's release for recent absences. Ms. Gibbs had been recently absent due to a bout with the flu and previously had some absences due to pregnancy. Although Ms. Gibbs indicated that she was released and able to return to work, she was told by the representative of Team Staffing Solutions, Inc. that her position had been terminated but that she was eligible for re-hire and the claimant was advised to check in weekly for a new job assignment. The telephone conversation was monitored by the claimant's mother, Joyce Gibbs, and by Michael Mitchell, claimant's significant other.

It appears that workforce development was subsequently informed that Ms. Gibbs had quit her job due to complications with her pregnancy by the same individual who was employed by Team Staffing Solutions, Inc. That individual is no longer employed by the company.

It is the employer's belief the claimant did quit employment via telephone on January 16, 2015 and that the employer's position is corroborated by the claimant's own statement during the fact-finding interview. (See Employer's Exhibit A).

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The evidence in this matter is disputed. The administrative law judge after carefully considering the matter concludes that the weight of evidence is established in favor of Kimber Gibbs and concludes that the claimant did not voluntarily quit her employment but was discharged by the employer via telephone on January 16, 2015.

In this matter the claimant's testimony that she was told that she was being separated from the company on January 16, 2015 is corroborated by the testimony of the claimant's mother and by the testimony of her significant other who monitored the telephone conversation. Ms. Gibbs testified that it was not her intention to quit employment and that she had called the employer on that day to specifically inform the company that she had been released to return to work and intended to do so. Claimant further testified that she was told at that time that her position was being terminated but that she was eligible to be re-hired for a different position and that she should call in weekly to check for a new assignment.

The administrative law judge also concludes that the fact-finding information establishes that Ms. Gibbs stated that she did not quit her employment but that she was discharged by the employer. Although the workforce center representative's decision justification statement concludes that the claimant quit because of complications with pregnancy, that conclusion is not final or dispositive in this matter. The claimant filed a timely appeal resulting in a due process hearing wherein both parties appeared and provided sworn testimony and had the right to cross-examination and to submit exhibits.

Based upon the hearing record in this matter, the administrative law judge concludes the claimant did not voluntarily quit employment but was discharged by the employer for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated August 11, 2015, reference 01, is reversed. Claimant was discharged by the employer for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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